

Chapter 4

Gifts and Other Activity Expenses

Activity Expenses

Among other things, lobbyists, lobbying firms, lobbyist employers/lobbying coalitions, and \$5,000 filers are required to disclose activity expenses, i.e., payments which benefit the persons identified below under “Definition of Activity Expense.” This section provides guidance on reporting activity expenses, the most common of which are gifts (e.g., food, beverages, flowers). However, activity expenses also include any form of compensation, such as consulting fees and salaries.

Complying with the Act’s provisions regulating activity expenses often depends upon the nature of the particular event or activity. This section provides guidance for the more commonly asked questions regarding activity expenses. Do not rely on the examples alone to ensure compliance with the Act. For reference, several regulations relating to activity expenses have been reproduced and are included in Appendix 1. Detailed reporting, notice requirements, and gift limits are discussed below. Also discussed are the exceptions that apply to both reporting requirements and to the gift limits.

Definition of Activity Expense

An “activity expense” is any payment that benefits, in whole or in part:

- An elected state officer;
- A legislative official;
- A state agency official;
- A state candidate; or
- A member of the immediate family of such officials or candidates (i.e., spouse and dependent children).

A payment that benefits a state agency official or member of an agency official’s immediate family is an activity expense only if the agency that employs the official is, or should be, listed on the donor’s lobbying registration statement.

This manual refers to an “agency official” and a “member of an agency official’s immediate family” as “reportable persons.”

Report activity expenses during the period in which they occurred, regardless of whether the expenses were actually paid during the period. All activity expenses must be reported whether or not lobbying occurs at the time of the event.

Examples *While awaiting the arrival of their respective airplanes, lobbyist Kathy Taylor purchases a cup of coffee for Senator Jim Smith. Even though they only engage in social conversation, the beverage is an activity expense that must be reported on Kathy’s Form 615.*

Colleen Jones is a lobbyist for the Olson Corporation. She only lobbies legislation affecting labor relations issues before the California Legislature. Colleen invited Mary Ann Ward, a state official with the Department of Water Resources, to breakfast. Because Colleen does not lobby the Department of Water Resources, the payment for Mary Ann’s breakfast is not a reportable activity expense.

Tomas & Winters is a law firm and a lobbying firm. Geneva is a lobbyist registered with Tomas & Winters to lobby the legislature. Recyclers United is a client of the law firm but is not a lobbyist employer. Recyclers United asks Geneva to set up a luncheon meeting with some legislative staff members. Even though Recyclers United is not a

lobbyist employer, since Geneva is a lobbyist, she may not arrange the luncheon meeting if the legislative staff members will receive a gift of more than \$10 (i.e., if the lunch will cost more than \$10 each). If the gift to the legislative staff members will be \$10 or less and Geneva arranges for the meeting, the amount of the gift each legislative staff member receives must be reported by Geneva on her Form 615.

Kempler Hospital is a lobbyist employer. Janice Duke is a surgeon employed by Kempler Hospital and is the spouse of the Director of Health Services, a state agency the hospital lobbies. Kempler Hospital must report Janice's salary as an activity expense.

Definition of Gift

Gifts are the most commonly reported activity expense. The Act defines a gift as any "payment" (which may be money or anything else of value, such as goods or services) that provides a personal benefit to the recipient for which consideration of equal or greater value is not received by the donor. The term "gift" includes, but is not limited to, payments made for food, beverages, and travel. Exceptions to the term "gift" are provided in Commission regulation 18942 which is contained in Appendix 1, under "Exceptions to Gift and Exceptions to Gift Limits."

Gift Limits

Lobbyists and lobbying firms may not make, or act as an agent or an intermediary in the making of a gift, or arrange for the making of a gift in excess of \$10 in a calendar month. This limit applies to any payment made directly or indirectly to any state candidate, elected state officer, legislative official, or to an official of any state agency required to be listed on the registration statement of a lobbying firm or a lobbyist employer/lobbying coalition. In addition, lobbyists and lobbying firms are prohibited from making any

payment toward a gift to state officials listed above if the value of the gift is more than \$10, even if the gift has multiple donors. Gifts made directly to members of an official's immediate family are not subject to the gift limits unless the family member is also a public official described above, but are subject to disclosure on quarterly reports.

In addition, state agency officials may not receive gifts aggregating more than \$360 per calendar year from most other sources, including all lobbyist employers/lobbying coalitions and \$5,000 filers.



The \$360 gift limitation is revised each odd-numbered year based on changes in the Consumer Price Index. It was last revised January 1, 2005. The \$10 gift limit restricting gifts from lobbyists and lobbying firms is not revised.

Arranging a Gift

Lobbyists and lobbying firms are prohibited from making or "arranging" a gift of more than \$10 in a calendar month to any state candidate, elected state officer, legislative official, or to an official of any state agency required to be listed on the registration statement of a lobbying firm or lobbyist employer/lobbying coalition. It is not necessary for a lobbyist or lobbying firm to actually pay for or incur an expense to meet the definition of "arranging" a gift.

A lobbyist or lobbying firm "arranges for the making of a gift" if the lobbyist or lobbying firm, either directly or through an agent, does any of the following:

- Delivers a gift to the recipient;
- Invites or sends an invitation to an intended recipient regarding the occasion of a gift;
- Solicits responses from an intended recipient concerning his or her attendance or non-attendance at the occasion of a gift;

- Acts as an intermediary in connection with the reimbursement of a recipient's expenses; or
- Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

Examples Lobbyist Dan Martinez invites a legislator to lunch. After the lunch has been arranged, Dan invites lobbyist Shirley Than to attend. Dan pays the entire cost of the lunch. Shirley is not required to report the luncheon because she did not pay for or "arrange" the gift. On his Form 615, Dan must report the entire cost of the lunch, provide the legislator's name, and the amount that was attributable to the legislator.

Together, Dan and Shirley invite a legislator's aide to lunch. The lobbyists share the cost of the lunch. They must both report the activity. In addition to reporting the amount they each paid, each lobbyist must report the total value of the aide's meal, indicate that the amount paid was a portion of the total cost, and report the total cost.

A lobbying firm's client hosts a reception for some legislators and their staff. The lobbying firm is the contact for the legislative officials, and the officials call the lobbying firm to RSVP. Although the lobbying firm does not make any of the payments in connection with the reception, the lobbying firm must report the event as an activity expense because the firm's activities come within the definition of "arranging a gift." If the client is a lobbyist employer, it must also report the activity expense.

Adrienne Kent is an employee of a law firm. The law firm is also a lobbying firm, although Adrienne is not a lobbyist. Adrienne is going to take a legislative staff member to lunch and charge it to the law firm's credit account. Even though Adrienne is not a lobbyist, the law firm must report the lunch as an activity expense.



Quick TIP In each of the previous examples, the benefit provided to the legislative officials may not exceed \$10 in value.

Example The California Insurance Coalition, a lobbyist employer, held its annual convention in South Lake Tahoe. Staff of the Coalition invited legislative officials and directed and controlled the event's preparations. The Coalition's lobbyist did not solicit responses to the event or direct or control any payment in connection with the event. The lobbyist may attend the event as long as an officer, manager, or executive of the Coalition is also present. The lobbyist is not required to report activity expenses in connection with the event on his or her Form 615. The activity expenses are reported on the Coalition's Form 635. The amount benefiting each legislative official is subject to the \$360 annual gift limit.

Source of a Gift

Generally, a person is the source of a gift if the person makes a gift to a reportable person and is not acting as an intermediary. Determining the source of a gift is based on the specific facts of each event. If you need assistance to determine the source of a gift, contact the Technical Assistance Division prior to the event. Also, guidance for determining the source of a gift may be found in regulation 18945, Appendix 1, under "Gift, Source."

Examples The Association of Consultants, a lobbyist employer, is holding a reception to entertain the California Legislature, legislative staff, and other public officials. The Association directs and controls the event's preparations, including determining the guest list, and planning the reception and entertainment. Although other business entities have been solicited to help fund the event, the contributing entities are not involved in any of the reception's

preparations, including the invitations. The Association is the source of the gift (activity expense) to each reportable person who attends the event. In addition, the gift counts toward each official's \$360 annual gift limit from the Association. The other business entities are not considered the source of the gift and do not incur reporting obligations.

On another occasion, at the request of the Olson Corporation, the Association invites an Assembly member to dinner to discuss a bill. The Olson Corporation, an Association member and also a lobbyist employer, agreed earlier to reimburse the Association for this specific event. The Olson Corporation is the source of the gift because it directs and controls a payment benefiting a clearly-identified official. Therefore, the Olson Corporation, not the Association, must report the dinner as an activity expense on its Form 635.

Gift Notifications

Filers of lobbying disclosure reports are required to notify officials to whom they make gifts aggregating \$50 or more in a calendar year. The notification requirements are provided below.

Invitations

Lobbyists, lobbying firms, lobbyist employers/lobbying coalitions, and \$5,000 filers are required to include the following notice in all written or printed invitations to events at which an elected state officer, a candidate for elective state office, a legislative official, or a state agency official will receive a reportable gift. The notice must be printed in no less than 8-point type and in a color or print that contrasts with the background of the invitation and must state:

Attendance at this event by a public official will constitute acceptance of a reportable gift.



WORLD WIDE BOX

July 14, 2004

Honorable Sonia Montana
State Senator, SD 40
State Capitol, Room 8
Sacramento, CA 95814

Dear Senator Montana:

Thank you for attending our reception on April 10, 2004. Please be advised that we will be reporting on our second quarter lobbying disclosure statement that you received a gift of \$75.21.

If you have any questions, please contact me at 415/555-5438.

Sincerely,
Alice Hummer
Vice President/California

Notification to the Beneficiary of a Gift

Correspondence notifying an official who is the beneficiary of a gift must be sent to the official within 30 days following the end of each calendar quarter in which the gift was provided. The correspondence must provide the following information:

- The date the gift was provided to the official;
- The amount of the gift; and
- A description of the goods or services provided.



QuickTIP In lieu of this notice, a copy of the "activity expense" section of the donor's quarterly lobbying disclosure report may be provided.

Important Notes:

- Elected state officers and candidates for elected state office must report gifts received from a single source totaling \$50 or more in a calendar year.

- Designated employees of state agencies and members of state boards and commissions must report gifts totaling \$50 or more in a calendar year from sources specified by their agency's conflict-of-interest code.

Valuing Gifts

In most circumstances, to determine the amount of a gift, the fair market value must be used. (See exceptions below.) The fair market value is the amount the recipient would pay for the item on the open market.

Example *The Franco Winery, a lobbyist employer, provides a bottle of its wine to a reportable person. The wine constitutes a gift and is a reportable activity expense. For reporting purposes, the wine is valued at what it would cost a member of the public to buy the same bottle of wine on the open market.*

Passes and Tickets

Passes or tickets given to an official that provide admission or access to facilities, goods, services, or other benefits are reportable gifts and activity expenses if they are used by the official or if the official transfers the item to another person. Such gifts are subject to the Act's \$10 and \$360 gift limits. The value of a pass or ticket that provides:

- One-time admission: the face value of the pass or ticket, excluding service fees associated with the purchase of the ticket, or if there is no stated cost, the price offered to the general public.
- Repeated admission or access to facilities, goods, services, or other benefits: the fair market value of the actual use of the pass or tickets by the recipient official, including guests who may accompany the official and who are admitted with the pass or tickets, plus the

fair market value of any possible use by any person to whom the official transfers the privilege or use of the pass or tickets.

Tickets to Nonprofit & Political Fundraisers

- Nonprofit associations not exempt under Section 501(c)(3) of the Internal Revenue Code: The value of a ticket to a fundraising event that clearly states that a portion of the ticket price is a donation to a nonprofit organization is the face value of the ticket reduced by the amount of the donation. If the ticket has no stated price or no stated donation portion, the value of the gift is the fair market value of any food, beverage, or other tangible benefits provided to each attendee.
- Nonprofit associations exempt under Section 501(c)(3) of the Internal Revenue Code: A ticket to a fundraising event for a nonprofit organization exempt under Section 501(c)(3) of the Internal Revenue Code has no value.
- Political fundraiser: A ticket to a political fundraiser has no value.

Wedding Gifts

For purposes of valuing wedding gifts, one-half of the value of the gift is attributable to each spouse, unless the gift is intended exclusively for the use and enjoyment of one spouse. If this is the case, the entire value of the gift is attributable to that individual. Lobbyists and lobbying firms are subject to the \$10 gift limit for wedding gifts. All other donors are not subject to a gift limit.

Example *A lobbyist purchases linens as a wedding gift for an Assembly member and spouse. The value of the gift may not exceed \$20.*

Home Hospitality

The cost of providing hospitality involving food, beverage, or occasional lodging at the home of a lobbyist is a reportable gift only if:

- Part of the cost is paid or reimbursed by the lobbyist's employer or lobbying firm;
- The lobbyist deducts any cost as a business expense on a tax return;
- There is an understanding that some of the lobbyist's compensation is for home hospitality. (See regulation 18630, Appendix 1, under "Home Hospitality.")

Example *Andrea Singh, a lobbyist, hosts a private dinner at her home for some friends and invites Brenda Shoemaker, a legislative staffer. The costs incurred by Andrea for the dinner are not a gift to Brenda, as long as the provisions of regulation 18630 are met. On another occasion, Andrea offers to host a birthday party for Brenda in Andrea's home and invites several of Brenda's friends. Because attendees will bring gifts to Brenda, a reportable person, the home hospitality regulation does not apply. Brenda would be receiving a gift from Andrea subject to the \$10 gift limit. The cost of hosting the event (e.g. the pro-rata value of the decorations and food) and any tangible item(s) would count toward the gift limit. In addition, Andrea is "arranging" for the making of gifts from others, which will also be subject to the \$10 gift limit.*

Informational Tours

On-site demonstrations, tours, or inspections designed specifically for officials are not gifts and are not subject to either the \$10 or \$360 gift limits. Travel to the site and subsistence provided to an official during an informational tour are generally considered gifts and are reported as activity expenses. However, transportation that is an integral part of the tour and is not commercially available may

be considered informational material and not a gift.

Example *A chartered bus tour of the Sacramento-San Joaquin Delta provided to legislators by an association of water agencies constitutes informational material, not a gift to the legislators. The tour enabled legislators to examine levees, fishing facilities, and local and state water projects in the Delta. Speakers from the California Departments of Water Resources and Fish and Game provided information throughout the tour. Thus, the tour served primarily to convey information and was provided to the legislators to assist them in performing their official duties of making decisions regarding California water policy. Expenses directly related to the bus tour are reported by the lobbyist employer under "Other Payments to Influence Legislative or Administrative Action." However, a legislator's air fare from Los Angeles to the tour site and the food and beverages provided in connection with the tour are gifts subject to the limits and disclosed under "Activity Expenses."*

Informational Material

In general, informational material (e.g., books, reports, pamphlets, calendars) provided to an official for the purpose of assisting him or her in the performance of his or her official duties is not considered a gift or an activity expense. If the official can also use the informational material for personal purposes, the informational material provided is a reportable activity expense. For example, providing an official with a *Consumer Reports* magazine subscription and a decorative map have been determined to be an activity expense because the items also provided a personal benefit to the official.

See page 5-9 for information on reporting the costs of studies, surveys, reports, or other materials used in connection with lobbying activities.

Personalized Plaques and Trophies Valued at Less than \$250

A personalized plaque or trophy valued at less than \$250 is not considered a gift to a public official and is not reportable as an activity expense by the donor.

Example *The Association of College Students hosts an awards banquet and presents a “Legislator of the Year” engraved plaque to a legislative member. The value of the engraved plaque is less than \$250. The legislative member does not report the plaque as a gift, nor does the Association report the plaque as an activity expense.*

Testimonial Events

When an official is honored at a testimonial dinner or similar event, the official's gift is valued at his or her pro rata share of the cost of the event plus the value of any specific item presented to the official at the event.

If the honored official has left office at the time the event is held, the \$10 and \$360 gift limits do not apply.

Invitation Only Events

When an official attends an invitation-only event such as a banquet, party, gala, celebration or other similar function, the official's gift is valued at his or her pro rata share of the cost of the event plus the value of any specific item presented to the official at the event.

Invitation Only Events Official Performs a Ceremonial Function

When an official, by virtue of his or her position, performs a ceremonial role at an event, only food and beverages plus the value of any specific item provided to the official, are valued to determine the official's gift.

Ticketed Events Official or Ceremonial Functions

When an official otherwise performs an official or ceremonial role or function on behalf of his or her agency, tickets given to the official and his or her spouse and immediate family are not gifts.

Baby Showers

When an official is honored at a baby shower, the official's gift is valued at his or her pro rata share of the cost of the baby shower (e.g., decorations and refreshments) plus any gifts for the specific use of the official (e.g., gift certificates). These gifts are subject to the \$10 and \$360 gift limits and must be reported as an activity expense.

Gifts for the specific use of the baby (e.g., stroller, blanket, and clothing) are gifts to the baby and are not subject to the \$10 or \$360 gift limits.

Valuing Food and Beverage

Gifts of food and beverage are the most commonly reported activity expenses.

- Restaurants. When food and beverage is provided to an official at a restaurant, the value of the gift is the actual cost of the items consumed by the official plus a pro rata amount for tax and tip.
- Testimonial Dinners and Invitation-Only Events: The value of such events is the pro rata share of the cost of the event. This includes the cost of all food and beverages, rent of the facilities, decorations, entertainment and all other costs associated with the event divided by the number of acceptances or the number of attendees. It is not permissible to divide the total cost of the event by the number of individuals invited.

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However, if an official notifies the donor/host in writing that he or she did not stay for any meal or entertainment and received only minimal appetizers and drinks, the value of the gift is the cost of the food and beverage consumed by the official and guests accompanying the official plus the value of any specific item provided to the official at the event. If the amount has been disclosed on a quarterly statement, the donor may adjust the amount benefiting the reportable person by filing a Form 690, Amendment to Lobbying Disclosure Report.

General Rules:

- An official has not received a gift if he or she returns the gift, unused, to the donor or donates the gift, unused, to a government entity or charitable organization within 30 days. The official may also reimburse the donor for some or all of the value of the gift. The reimbursement must occur within 30 days.
- The term “pro rata share of the cost of the event” means the cost of all food and beverages, rent of the facilities, decorations, entertainment, and all other costs associated with the event, divided by the number of acceptances or the number of attendees.
- A lobbyist who does not make or arrange for a gift to an official may attend an event where the official receives a gift of more than \$10 if the person making the gift (or the person’s representative) is also in attendance.
- When a reception or other event to entertain or meet with officials is held in conjunction with other meetings, such as an organization’s annual meeting, report the total cost of the reception and not the total cost of the organization’s annual meeting in the column “Total Amount of Activity.”
- When the expenses of an event are shared, report the amount the lobbyist,

lobbying firm, lobbyist employer/lobbying coalition, or \$5,000 filer paid toward the event in the “Total Amount of Activity” column. In addition, report the total cost of the event in a footnote. See page 5-9 for an example.

- At large gatherings, a guest book or sign-in sheet should be used to identify the reportable persons that attended the event. Records must indicate the total number of individuals who attended and the amount attributable to each. However, it is not necessary to list guests who are not reportable persons on a lobbying disclosure statement.
- The \$10 and \$360 gift limits do not apply to a member of the immediate family (spouse and dependent children) of a state candidate, legislative official, elected state officer, or state agency official. However, gifts provided to immediate family members are reportable activity expenses.
- Generally, gifts given directly to members of an official’s immediate family are not gifts to the official as long as the official does not use the gift or exercise direction and control over it. However, if an official enjoys a direct benefit from a single gift, as well as members of the official’s family, the gift’s full value is attributed to the official.

Example *Senator Ivan Reeves and spouse attend an event at which the benefit received is \$25 per person. If the invitation is addressed to “Senator Reeves and Spouse,” the amount of the gift attributable to the Senator is \$25. However, if the invitation is addressed to “Senator Reeves and Guest,” and the spouse or another individual attends the event, the amount of the gift attributable to the Senator is \$50 because he determined who the guest would be.*

- If the guest of an official stays in the same hotel room as the official, the full amount for the lodging is attributable to the official, even if the guest is the official's spouse.

Payments for Legislative, Governmental or Charitable Events (“Behested Payments”)

Periodically, lobbying entities are asked by state elected officeholders to make payments or provide goods or services to support an event or activity. Because such activities are at the behest of an officeholder, the issue arises whether these payments are reportable contributions or gifts.

In general, payments are considered contributions if they are made principally for election-related activities. If a portion of a payment is for election-related activities, the payment is considered a “contribution.” For guidance, a list of election-related activities is provided in Government Code section 82015 (b)(2)(C)(i-viii). As reviewed in Chapter 5, filers of lobbying reports must disclose contributions of \$100 or more made to state candidates and officeholders.

The following types of payments made at the behest of a candidate are presumed to be for purposes unrelated to a candidate's candidacy for elective office and, therefore, are not contributions:

- A payment made principally for personal purposes;
- A payment made by a governmental agency or an organization with a tax exempt status under Internal Revenue Code Section 501(c)(3); and
- A payment made principally for a legislative, charitable, or governmental purpose.

As reviewed in the preceding pages, a payment made principally for a personal purpose may be considered a gift and a

reportable activity expense. Officeholders are also required to report certain gifts of \$50 or more received from the same source in a calendar year. Gifts are also subject to limits.

State elected officeholders are required to report a payment made at their behest if the payment was made principally for a legislative, charitable, or governmental purpose. State officials file this report with their agency and, within 30 days, a copy of the report must be forwarded to the FPPC. Only sources of payments aggregating \$5,000 or more in a calendar year are disclosed. The public document must include, among other items, the date of the payment, source, payee, and a description of the specific purpose or event for which the payment was made.

When a lobbyist employer or \$5,000 filer makes such a payment under this provision, the payment must be reported if the payment was made in connection with “influencing legislative or administrative action.” Such determination is made on a case by case basis. Donations to charities (e.g., a nonprofit organization exempt under section 501(c)(3) of the Internal Revenue Code) are not required to be reported on the quarterly lobbying disclosure statement.

Examples *At the behest of a state Senator, the Opti Company made a \$7,000 direct payment to the Cancer Society, a 501(c)(3) organization. The Opti Company is not required to report the payment on its quarterly lobbying report. The Senator will file a report disclosing the charitable payment. The Senator's report is filed with the Senate Rules Committee, and a copy is sent to the Fair Political Practices Commission. The report is a public document.*

On another occasion, the Opti Company, at the Governor's behest, made a \$10,000 payment to the nonprofit corporation set up for the Governor's inaugural. The Opti

Company must report the payment on its quarterly lobbyist report under the category, "Other Payments to Influence."

The Opti Company, at the behest of an Assembly member, made a payment to a Sacramento restaurant for food and beverages for several legislators and staff who were working late one evening. This payment is a gift and must be reported on the quarterly lobbying report under the category, "Activity Expense." The legislators and staff may also be required to report this gift.

Honoraria Ban

Legislative officials, most state and local officials and employees, and candidates for state and local office may not accept honoraria payments.

"Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

While most officials are subject to the ban on accepting honoraria, payments or reimbursements for an official's transportation, lodging, and subsistence are generally not considered honoraria.

Travel Payments

In general, payments for travel (ground or air transportation, lodging, and meals) that benefit an official constitute gifts. However, depending on the circumstances, a travel payment may not be subject to limits, or may be considered a contribution or income to the official.

Regulations 18944.2 (Gifts to an Agency), 18950.1 (Gifts of Travel: Exceptions), 18950.3 (Travel in Connection with Speeches, Panels, and Seminars: Exception for All Filers), and 18950.4 (Payments for Travel) in Appendix 1 provide guidance for determining

whether a specific travel payment is a gift, income, or a contribution and whether the payment is reportable and subject to gift limits. The regulations address:

- Travel in connection with a speech;
- Travel provided by governmental entities and charities;
- Travel provided to an official's agency;
- Travel in connection with a bona fide business; and
- Travel in connection with campaign activities.

Following is a selected summary of the Commission's current advice. This advice is based on specific sets of circumstances and is provided for informational purposes only. Do not rely on the examples alone to ensure compliance with the Act. It is recommended that persons contact the Commission before making travel payments.

- An official was advised that acceptance of Super Bowl tickets from a nonprofit organization that promotes local sports and the use of its private corporate jet to attend the Super Bowl would violate the gift limit. However, the official could reimburse the organization for the amount over the gift limit within 30 days of receipt.
- An Assembly member has been advised that payment for airfare to Maui, Hawaii, to participate as a keynote speaker at an association's convention that focused on developing Pacific Rim markets for agricultural products was reasonably related to a governmental purpose. The airfare payment is not subject to gift limits, but must be reported as an activity expense. The requirement to report the payments for lodging and meals will depend on the specific facts of the trip.
- An organization provided travel and accommodations to a state agency's employees so that the employees could

attend a training program. Because the state agency received and controlled the payments for travel from the organization, used the payments for agency business, selected the employees who attended the training program, and recorded the payments in a public record, the Commission advised that the travel payments constituted a gift to the state agency and not gifts to the state employees who attended.

- An Assembly member's administrative assistant has been advised that he may accept payments from a lobbyist employer for transportation, room and board, and a speaking fee for his performance as a stand-up comic. The payments for his performance constitute earned income in connection with his bona fide business. The lobbyist employer is required to report the payments as an activity expense.
- The Commission has advised that a third party's payments for an elected official's air travel to attend the official's campaign fundraiser is a contribution. Contributions of \$100 or more must be reported on a lobbying disclosure quarterly report.
- An association paid an official's transportation, meals, and lodging expenses directly in connection with an event at which the official gave a speech in Pebble Beach, California. The payments are not subject to the gift limits and are not reportable by the association or the official.

Important Notes:

- If an official claims that a payment for travel is income and not a gift, the official has the burden of proving that the consideration he or she provided was of equal or greater value than the payment received. There is no exact formula to determine whether an official has provided consideration of equal or greater value, and, ultimately, this determination is a factual one. Such payments are generally

considered a gift, although they may not be subject to the gift limits.

- Regulation 18950.1 exempts certain travel payments from the \$360 gift limit but does not exempt the payments from the \$10 gift limit imposed on lobbyists and lobbying firms.

Questions and Answers

- Q. *A lobbyist uses personal funds to take an official to lunch. The lobbyist is later reimbursed by his or her employer. Is the lobbyist subject to the \$10 gift limit under these circumstances?*
- A. Yes. Whether a lobbyist is reimbursed by his or her employer, a lobbyist may not make a gift benefiting an official of more than \$10 in a calendar month.
- Q. *Is a lobbying firm prohibited from arranging an out-of-state speaking engagement for an official on behalf of one of the firm's clients?*
- A. Out-of-state travel is a gift which is subject to the \$10 gift limit. Therefore, any employee of the lobbying firm is prohibited from arranging the travel.
- Q. *Must the gift notification language be provided on all invitations to events?*
- A. No. Only invitations to an event at which an official will receive a reportable gift. Officials must report gifts aggregating \$50 or more in a calendar year from a single source.
- Q. *When a lobbyist employer makes a gift of \$50 or more to the spouse of a legislator, is the lobbyist employer required to send the gift notification?*
- A. The notice is not required unless the legislator's spouse is a state officeholder, state candidate, or an official of a state agency lobbied by the filer.
- Q. *May an official and spouse spend a weekend at the vacation home of a*

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lobbyist when the lobbyist does not stay at the house the entire weekend?

- A. No. The time the lobbyist does not stay with the official is considered a gift from the lobbyist and subject to the \$10 gift limit. Since the value of the use of the house exceeds the \$10 gift limit, the lobbyist is prohibited from permitting the official's use of the vacation home without the lobbyist or a member of the lobbyist's immediate family present.

Q. *May a trade association provide a T-shirt, valued at \$10, to a public official who gives a speech at the association's annual conference?*

- A. Yes. Regulation 18950.3 provides that a non-cash, nominal benefit such as a coffee mug, T-shirt, pen, etc., may be provided to an official attending an event when the official gives a speech, participates in a panel or seminar, or provides a similar service. The item is not reportable or subject to the \$10 or \$360 gift limits. The regulation is intended to provide an official the opportunity to accept a nominal item for his or her services.

Q. *If a lobbyist pays for a reportable official's meal and within 30 days is reimbursed by the person for the full amount of the meal, must the lobbyist disclose the meal as an activity expense?*

- A. No. As long as reimbursement occurs within 30 days, the lobbyist is not required to disclose the activity.

Q. *May a lobbyist, who is acting in his or her capacity as the executive director of an association, make or arrange a gift benefiting an official of more than \$10?*

- A. No. No matter what other position a lobbyist holds, the gift limit and the prohibition against making or arranging gifts over \$10 apply.

Q. *May a lobbyist take an official to lunch and pay more than \$10 if the official buys the lobbyist's lunch the next time they meet?*

- A. No. There is no provision in the law for reciprocating or exchanging gifts with a lobbyist.

Statutory and Regulatory References

Statutes

82015	<i>Contribution</i>
82028	<i>Gift</i>
82038	<i>Legislative Official</i>
86111	<i>Activity Expense; Agency Official</i>
86112.3	<i>Invitations</i>
86112.5	<i>Notification to Beneficiary of a Gift</i>
86201	<i>Gift</i>
86203	<i>Unlawful Gifts</i>
87207	<i>Disclosure of Income</i>
89501	<i>Honoraria (Definition)</i>
89502	<i>Honorarium (Prohibition)</i>
89503	<i>Gift Limits</i>
89506	<i>Travel Payments, Advances and Reimbursements</i>

Regulations

18624	<i>Lobbyist Arranging Gifts</i>
18630	<i>Home Hospitality (86203)</i>
18640	<i>Activity Expenses</i>
18940.2	<i>Gift Amount Limit</i>
18941	<i>Receipt, Promise and Acceptance of Gifts</i>
18942	<i>Exceptions to Gift and Exceptions to Gift Limits</i>
18942.1	<i>Definition of "Informational Material"</i>
18943	<i>Return, Donation, or Reimbursement of a Gift</i>
18944	<i>Valuation of Gifts to An Official and His or Her Family</i>
18944.2	<i>Gifts to an Agency</i>
18945	<i>Source of Gifts</i>
18945.3	<i>Intermediary of a Gift</i>
18946	<i>Reporting and Valuation of Gifts</i>
18946.1	<i>Reporting and Valuation of Gifts: Passes and Tickets</i>

- 18946.2 *Reporting and Valuation of Gifts:
Testimonial Dinners and Events*
- 18946.3 *Reporting and Valuation of Gifts:
Wedding Gifts*
- 18946.4 *Reporting and Valuation of Gifts:
Tickets to Nonprofit and Political
Fundraisers*
- 18950.1 *Gifts of Travel: Exceptions*
- 18950.3 *Travel in Connection With
Speeches, Panels, and Seminars:
Exception for All Filers*
- 18950.4 *Payments for Travel in Connection
with Campaign Activities*